APPENDIX A

United States Department of State

Washington, D.C. 20520

PREPARATION OF LETTERS ROGATORY FOR THE USE IN RUSSIA

Requests for service or for evidence in Russia may be accomplished only by means of letters rogatory. This was codified by an exchange of notes at Moscow on November 22, 1935 and a related note of January 19, 1937 (49 Stat. 3849; Executive Agreement Series 83).

1. A letter rogatory is a letter of request from a court in the United States to a court in a foreign country requesting international judicial assistance. For a sample letter rogatory see: 4 J. Moore, Moore's Federal Practice, 28.05; 22 CFR 92.54, 92.66 (Caveat: Do not draft the letter rogatory as a request from the President of the United States, but rather as a request from the court.) Also see 8 Wigmore, Evidence, rev. (McNaughton 1961) Sec. 2195a (ii).

2. Letters rogatory must be issued under the seal of the court and the signature of the judge. The letter rogatory should be addressed simply "To Appropriate Judicial Authority of the Russian Federation." (See The Mandu, 11 F. Supp. 845, EDNY 1935).

3. The letters rogatory and any accompanying documents must be translated into the Russian language regardless of the region in Russia in which they are to be

executed. The translator should execute an affidavit as to the validity of the translation before a notary.

4. The letters rogatory must be submitted, in duplicate, to the Office of Citizens Consular Services, Room 4817 N.S., Department of State, Washington, D.C. 20520 for onward transmission to the American Embassy in Moscow. The American Embassy will transmit them to the Russian Ministry of Foreign Affairs. The documents will then be sent by the Ministry of Foreign Affairs through the Ministry of Justice to the appropriate court. The documents transmitted to the Department of State should therefore include the following: the original letter rogatory under seal, or a certified copy thereof; a photocopy of the letter rogatory; an original translation of the letter rogatory and any accompanying documents with a notarized statement of authenticity of translation; and a photocopy of the translation.

5. The documents transmitted to the Department of State should be accompanied by a letter which sets forth the name of the case, docket number, and mailing address of the clerk of court to whom the executed request should be returned. In addition, the letter should include a statement of responsibility for additional costs incurred in excess of the required deposit which accompanies the letter. The deposit should be in the form of a certified check or money order made payable to the American Embassy Moscow in the amount of $100.00.. The consular fee for handling letters rogatory ($16.00) will be deducted from the deposit. Any monies not expended in payment for foreign government fees will, of course, be refunded. If there is more than one person to be served or witness to be deposed, separate letters rogatory must be prepared. In such cases a deposit in multiples of the consular fee should be provided. (22 CRF 22.1, item 67, revised 2/1/81).

6. Additional questions regarding letters rogatory should be addressed to the Office of Citizens Consular Services, Europe and Canada Division (202) 647-3445. Interpretation

of a particular question of foreign law in a particular case should be referred to foreign counsel.

7. The information in this circular on foreign law has been obtained from past experience and is not necessarily authoritative. For specific information on service in the Russia, it may be helpful to contact the Russian Embassy in Washington, D.C. at (202) 939-8916, or an attorney in Russia.

APPENDIX B

JUDICIAL ASSISTANCE IN THE RUSSIAN FEDERATION

DISCLAIMER: THE INFORMATION CONTAINED IN THIS CIRCULAR RELATING TO THE LEGAL REQUIREMENTS OF SPECIFIC FOREIGN COUNTRIES IS PROVIDED FOR GENERAL INFORMATION ONLY AND MAY NOT BE TOTALLY ACCURATE IN A PARTICULAR CASE. QUESTIONS INVOLVING INTERPRETATION OF SPECIFIC FOREIGN LAWS SHOULD BE ADDRESSED TO THE APPROPRIATE FOREIGN AUTHORITIES OR FOREIGN LEGAL COUNSEL.

SERVICE OF PROCESS

The service of United States judicial documents in Russia is usually effected by letters rogatory. The document being served should be accompanied by a Russian language translation of its contents. (Such documents may be served without an accompanying translation if the party being served agrees to accept them.)

Legal documents may also be served by agent or through international registered mail. However, in accordance with the directive of the Supreme Soviet of June 21, 1988, compulsory service of legal documents is not possible by these means without prior permission from a Russian court. In this event, an open court hearing is held (of which the defendant must be informed) to determine the suitability of the request. If the court grants its permission for service, a Russian Writ of Execution (Ispolnitelniy List) is issued, and the documents may be served through the requested means.

OBTAINING EVIDENCE

Voluntary Depositions

Russian law does not specifically regulate the procedure by which voluntary depositions are obtained. The law does not prohibit anyone from taking or giving voluntary statements, regardless of nationality of the witness, provided that the information contained in the statement is not a state secret and will not adversely effect the state's institutional or individual interests. Voluntary statements are recognized as "evidence" regardless of the presence or absence of an attorney during the testimony process. However, statements obtained by means other than those detailed in the Russian Criminal and Civil Procedure Codes are not considered to be a "deposition of witness" in the Russian legal system.

The taking of voluntary depositions for use in United States courts is not prohibited by Russian law. A private U.S. attorney is not required to seek the interposition of a local Russian attorney is such a case. Russia is not a signatory to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters; therefore, a U.S. lawyer should observe rules of procedure based on the U.S. Federal Rules of Civil Procedure. The procedures for taking a statement under Russian law can be found in the following documents: the Criminal Procedure Code of the Russian Federation (Articles 72-74, 106, 155-161, 228, 270, 277, 283 and 286) and the Civil Procedure Code of the Russian Federation (Articles 61, 62, 87, 89, 153, 168, 169 and 170-73).

Non-Voluntary Depositions

Non-voluntary depositions are obtained either through the transmission of letters rogatory or by the procedures outlined in the Criminal and Civil Procedure Codes of the Russian Federation (ref. articles listed above). Again, non-voluntary testimony which is obtained in ways other than those described in the Criminal and Civil Procedure Codes is not considered a "deposition of witness" under Russian law, regardless of the presence or absence of an attorney.

Compulsion of Evidence/Judicial Compulsion of Witnesses to Testify

According to Russian law, only the Office of the Procurator, Russian courts and other investigatory institutions have the authority to compel an individual or an organization to make a legal statement regarding a pending case within an established period of time. Articles 31, 32, 119, 127 and 132 of the Russian Criminal Code permit investigatory institutions to authorize other institutions to conduct investigations, including the deposition of witnesses. They can do so by means of a "porucheniye" (authorization or commission), which is the Russian term that most closely approximates the meaning of the term "letters rogatory." In accordance with Article 436 of the Russian Code of Civil Procedure and Article 32 of the Code of Criminal Procedure, the compulsion of evidence at the request of a foreign institution is regulated by international agreements between Russia and the country requesting such action. If no agreement exists, requests involving civil cases are carried out if they do not interfere with Russia's sovereignty or safety.

Russian courts and investigatory institutions have the authority to order a witness evading a summons to testify to appear at a court hearing or before an investigator. However, no method exists to compel a witness to testify before a consular officer.

Pre-Trial Discovery

In accordance with Article 141 of the Civil Procedure Code of the Russian Federation, a judge preparing a civil case to be heard in court has the right to perform pre-trial activities. These include "osmotr na meste" (viewing the crime scene), interrogating the plaintiff and defendant, and asking the defendant to make a statement in writing.

Commercial Court Reporter Services

Stenographers should be available through the Moscow Society of Lawyers (Moskovskaya Kollegia Advocatov).

BILATERAL, MULTILATERAL, AND INTERNATIONAL AGREEMENT CONVENTIONS

At present, no bilateral agreement on judicial assistance exists between the United States and Russia. While Russia is signatory to the Hague Convention Abolishing the Requirements of Legalization for Foreign Public Documents, it is not a signatory to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters or to the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

APPENDIX C

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
WASHINGTON, D.C. 20544

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Director

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November 6, 1980

MEMORANDUM TO: All United States District Court Clerks

SUBJECT: Service of Process in Foreign Countries

The Department of State has advised us that a number of foreign states have recently submitted diplomatic notes of protest objecting to service of process of international mail upon defendants residing within their territory. This memorandum is being distributed in an attempt to clarify the procedures to be followed in serving American judicial documents abroad.

Service upon defendants in cases arising in federal district courts is governed generally by Rule 4(i) of the Federal Rules of Civil Procedure. Service by mail is dealt with in Rule 4(i)(1)(D). That Rule provides that the clerks of court shall be responsible for dispatching the summons and complaint into the international mails.

When summonses and complaints are mailed abroad in accordance with Rule 4(i)(1)(D), this method of service, according to some foreign states, violates either the judicial sovereignty of those foreign states or international law. These governments protest that such service usurps the

functions of duly designated officials of their country who are charged by the domestic laws of their country to perform service of process.

Similarly, service by international mail in those countries which are a party of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, (done at the Hague, November 15, 1965; entered into force for the United States, February 10, 1969; 20 USR 361; TIAS 6638, 658 UNTS 163), and which have made a reservation with respect to Article 10(a) of the Convention, whereby a state declares it objects to service by international mail, has also generated diplomatic notes of protest.

In order to avoid this problem in the future, we are requesting clerks of court to refrain from sending summonses and complaints by international mail to foreign defendants in those countries which have protested service by international mail, namely Czechoslovakia, Switzerland, and the Union of Soviet Socialist Republics. In those countries, letters rogatory are the appropriate mechanism for service.

There are currently 19 countries party to the Hague Service Convention, including the United States, namely, Barbados, Belgium, Botswana, Denmark, Egypt, Finland, France, the Federal Republic of Germany, Israel, Japan, Luxembourg, Malawi, The Netherlands, Norway, Protugal, Sweden, Turkey, and the United Kingdom. Of those, Egypt, the Federal Republic of Germany, Norway and Turkey have indicated in their instruments of ratification that they object to service by international mail. Service, therefore, should not be attempted by international mail in those four countries. With regard to other Convention countries, service through the Convention is the preferred method.

We are sending, for your further information, portions of a document prepared by the Department of Justice entitled "International Judicial Assistance." This paper contains a clear and thorough discussion of the proper procedure for serving American judicial documents abroad under the

Hague Service Convention and in countries with which the United States has no treaty arrangements.

Carl H. Imlay
General Counsel

Attachments